

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of September, two thousand and six.

PRESENT:

HON. JOSEPH M. McLAUGHLIN,
HON. JOSÉ A. CABRANES,
HON. ROSEMARY S. POOLER,
Circuit Judges.

Xiuyu Shi, Wei Lin & Ming Lin,
Petitioners,

v.

Nos. 03-4622-ag (L);
03-4623-ag (Con);
03-4624-ag (Con)
NAC

Alberto R. Gonzales,*
Respondent.

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: David V. Kirby, United States Attorney for the District
of Vermont, Carol L. Shea, Michael P. Drescher, Assistant United
States Attorneys, Burlington, Vermont.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft.

1 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
2 petition for review is DENIED.

3 Xiuyu Shi, Wei Lin, and Ming Lin, through counsel, petition for review of a BIA decision
4 affirming the decision of Immigration Judge (“IJ”) Douglas B. Schoppert denying their applications
5 for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We
6 assume the parties’ familiarity with the underlying facts and procedural history of the case.

7 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8
8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency determination. *See,*
9 *e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362 F.3d
10 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual findings, including adverse
11 credibility determinations, under the substantial evidence standard, treating them as “conclusive
12 unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. §
13 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

14 The IJ found Shi not to be credible because both her asylum application and the assessment
15 to refer memo, which was prepared by the asylum officer who interviewed Shi, list the date of her
16 alleged forced sterilization as October 23, 1997, whereas Shi testified at her merits hearing that the
17 sterilization took place on August 25, 1986. Specifically, Shi testified that two days after being
18 warned by family planning officials that either she or her husband would have to be sterilized, five
19 officials took her to a hospital where she was forcibly sterilized on August 25, 1986. On her asylum
20 application, however, Shi claimed that in late 1986, after family planning officials told her and her
21 husband that one of them would have to be sterilized, the couple went into hiding for a period of
22 time, and that in 1989, her husband fled to the United States. Shi further claimed that after her
23 husband fled, she was “forced to have an IUD insertion again and was required to have regular

gynecological check-ups,” and was ultimately sterilized on October 23, 1997, after she failed to report for a routine gynecological examination. In addition, the referral memo from Shi’s asylum interview states that Shi was sterilized on October 23, 1997, years after her husband allegedly fled China.

Because these discrepancies regarding the date of Shi's alleged sterilization involved the heart of Shi's asylum claim, the IJ's adverse credibility finding was supported by substantial evidence in the record. *See Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003). Since the only evidence of a threat of future persecution to Shi depended upon her credibility, the adverse credibility determination in this case necessarily precludes success on Shi's claim of a well-founded fear of persecution. *See Paul v. Gonzales*, 444 F.3d 148, 154 (2d Cir. 2006); *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003). Because Shi did not raise her claims for withholding of removal and CAT relief before the BIA, and she does not raise them here, those claims are both unexhausted and waived. *See* 8 U.S.C. § 1252(d)(1); *Gill v. INS*, 420 F.3d 82, 86 (2d Cir. 2005); *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 542 n.1, 546 n.7 (2d Cir. 2005).

For the foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2) and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____